

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**LATTIME CONSTRUCTION AND
HOME BUILDING, INC.,**

Plaintiff,

v.

**CENTURYTEL SERVICE GROUP,
LLC, et al.,**

Defendants.

Case No. 1:05-cv-1062-MEF

**MOTION IN LIMINE TO PRECLUDE
EXPERT WITNESS TESTIMONY BY EARL JERNIGAN, CPA**

Pursuant to Rule 37(c) of the Federal Rules of Civil Procedure, defendants L. M. Berry and Company and CenturyTel Service Group, LLC jointly move this Court in limine to enter an order precluding the plaintiff from offering opinion testimony from Earl Jernigan, CPA, during the presentation of the plaintiff's evidence at trial. In support of this motion, these defendants show unto the Court the following grounds:

1. In this Court's Scheduling Order of February 16, 2006 (doc. 22), this Court required that the plaintiff disclose the identify of any expert witness, and provide a report of any retained expert, by October 24, 2006.

2. In a letter dated September 25, 2006, plaintiff's counsel identified Earl Jernigan, CPA, as an expert witness that the plaintiff expected to call at trial. *See* Exhibit A. In this letter, plaintiff's counsel stated that Jernigan "has made no formal report regarding his testimony" and generally revealed the subject of Jernigan's testimony only by stating that "[h]e will testify as to the tax returns of Plaintiff for the years 2003, 2004 and 2005." No other information regarding

the expected testimony of Mr. Jernigan has been disclosed prior to the date of the filing of this motion.

3. The defendants do not assert or suggest that plaintiff's counsel possesses a report from Mr. Jernigan that has not been disclosed. Rather, defendants assert in this motion that without pre-trial disclosure of any opinions that might be expressed by Mr. Jernigan, and the basis for those opinions, the defendants will be unfairly prejudiced in their ability to prepare for trial.

4. The defendants do not contest the authenticity of the plaintiff's income tax returns for the years 2003, 2004 and 2005, and the defendants by this motion do not seek an order barring Mr. Jernigan from testifying that he is a certified public accountant and that he prepared the income tax returns of the plaintiff for the years 2003, 2004 and 2005. The defendants do seek an order in limine precluding the plaintiff from seeking to introduce opinion testimony by Mr. Jernigan as to any conclusions he may have reached regarding any reasons or causes for the particular amounts of gross receipts, gross profit, and ordinary income shown on these three income tax returns.

5. Rule 37(c) of the Federal Rules of Civil Procedure provides that if a party, without substantial justification, fails to disclose information required by Rule 26(a) or Rule 26(e)(1), that party will not be permitted to introduce such evidence at trial, unless the failure is harmless. The introduction of any opinion testimony that the plaintiff has suffered lost profits or other economic damages in some amount as a result of the claimed breach of the directory advertising contract at issue in this action, without any pre-trial disclosure of those opinions and the bases for those opinions, will not be harmless to the defendants.

Wherefore, defendants L. M. Berry and Company and CenturyTel Service Group, LLC move this Court to enter an order in limine precluding the plaintiff from offering opinion testimony from Earl Jernigan as set forth in this motion.

s/ Craig A. Alexander

Craig A. Alexander (ASB-3390-N68C)
Counsel for Defendants L. M. Berry and Company
and CenturyTel Service Group, LLC

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleading on all counsel of record by facsimile and by placing same in the United States Mail, properly addressed and first class postage prepaid:

John E. Byrd, Sr.
P.O. Box 536
Dothan, AL 36302

On this the 9th day of February, 2007.

s/ Craig A. Alexander

OF COUNSEL